

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

PERCY LEE RHODES,

Plaintiff,

v.

JOSEPH RUIZ, et al.,

Defendants.

Case No. 1:21-cv-00942-CDB (PC)

**ORDER DISCHARGING ORDER TO
SHOW CAUSE**

(Doc. 53)

Plaintiff Percy Lee Rhodes, a former county jail inmate, is a proceeding pro se and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983.

I. RELEVANT BACKGROUND

On December 23, 2024, Defendant Cortez filed a motion for summary judgment, or alternatively, summary adjudication. (*See* Doc. 51.) The motion included a *Rand*¹ warning. (Doc. 51-3.) The following day, Defendant McComas filed a motion for summary judgment. (*See* Doc. 52.) It too included a *Rand* warning. (Doc. 52-4.)

On January 16, 2025, when more than 21 days had passed without a response by Plaintiff, the Court issued its Order To Show Cause (OSC) Why Sanctions Should Not Be Imposed for Plaintiff's Failure to File an Opposition or Statement of Non-Opposition. (Doc. 53.) Plaintiff was

¹ *Rand v. Rowland*, 154 F.3d 952, 958 (9th Cir. 1998).

1 directed to file a written response to the OSC, or alternatively, to file an opposition or statement
2 of non-opposition to the pending summary judgment motions within fourteen days. (*Id.* at 3.)

3 On January 21, 2025, Plaintiff filed a document titled “Notice and Warning to Defendant
4 Ivana Cortez [Fed. R. Civ. P.56] Plaintiff’s Opposition to Defendant’s Motion for Summary
5 Judgment.” (Doc. 54.)

6 On January 28, 2025, Plaintiff filed a document titled “Plaintiff’s Statement of Failure to
7 File An [Opposition] or Statement [of] Non-Opposition.” (Doc. 55.) That same date, Plaintiff also
8 filed pleadings opposing summary judgment as to Defendants Lightner, McComas, and Ruiz.
9 (Docs. 56-58.)

10 II. DISCUSSION

11 In his written response to the OSC, Plaintiff states his failure to file an opposition or
12 statement of non-opposition to the pending summary judgment motions was “entirely [his] error
13 [but] not the result of [a] deliberate or intentional decision by Plaintiff.” (Doc. 55 at 1.) Plaintiff
14 asks that sanctions not be imposed. (*Id.* at 2.)

15 In light of Plaintiff’s written response to the OSC and the oppositions filed on January 21
16 and January 28, 2025, the Court will discharge the OSC finding that Plaintiff’s conduct cited in
17 the order to show cause is the result of excusable neglect and has been remedied with Plaintiff’s
18 recent filings. *See In re Veritas Software Corp. Sec. Litig.*, 496 F.3d 962, 973 (9th Cir. 2007).
19 The time for opposing the pending summary judgment motions has now passed.

20 The pending summary judgment motions will be deemed submitted on February 11, 2025,
21 the deadline for the filing of any reply, employing January 28, 2025, as the opposition filing date.
22 *See* Local Rule 230(l). No further briefing will be accepted. The Court will issue its order on the
23 summary judgment motions in due course.

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III. CONCLUSION AND ORDER

Accordingly, the Court **HEREBY ORDERS** that the OSC issued January 16, 2025 (Doc. 53), is **DISCHARGED**.

IT IS SO ORDERED.

Dated: **January 30, 2025**


UNITED STATES MAGISTRATE JUDGE